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22 UNITED STATES DISTRICT COURT

23 DISTRICT OF NEVADA

14 JAMES RAY WALKER,

Case No. 2:15-cv-01240-RFB-EJY

15 Petitioner,

16 v.

17 WILLIAM GITTERE, et al.,

18  
19 UNOPPOSED MOTION FOR  
20 EXTENSION OF TIME TO FILE  
21 SECOND AMENDED PETITION  
22 FOR WRIT OF HABEAS CORPUS  
23 (POST-CONVICTION)

24 Respondents.

25 (SECOND REQUEST)

26 DEATH PENALTY CASE

27  
28 James Ray Walker, through counsel, hereby requests an extension of time of  
29 sixty (60) days, up to and including Friday December 3, 2021, within which to file  
30 his Second Amended Petition for Writ of Habeas Corpus. This is Mr. Walker's

1 second request for an extension of time. The State does not oppose the motion. This  
2 request is made and based on the following declaration of counsel and the entire file  
3 herein.

4 DATED this 4th day of October, 2021.

5 Respectfully submitted  
6 RENE L. VALLADARES  
7 Federal Public Defender

8 */s/ Martin L. Novillo*  
9 MARTIN L. NOVILLO  
10 Assistant Federal Public Defender

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## **DECLARATION OF MARTIN L. NOVILLO**

I, Martin L. Novillo, declare as follows:

1. I am an attorney at law, admitted to practice before this Court, and employed as an Assistant Federal Public Defender. I represent petitioner James Ray Walker in this capital habeas case, having entered my appearance in this action on April 21, 2021. ECF No. 93.

2. Mr. Walker filed his proper person Petition for a Writ of Habeas Corpus on June 30, 2015. ECF No. 1. Mr. Walker amended his petition following the appointment of the Federal Public Defender for the District of Nevada (FPD). ECF Nos. 40, 77. On March 30, 2016, this Court entered an order staying this action while Petitioner exhausted in state court his unexhausted claims for habeas corpus relief. ECF No. 69.<sup>1</sup> The state proceedings concluded and, on May 6, 2021, this Court entered an Order vacating the stay previously entered and to re-opening Mr. Walker's federal habeas action. ECF No. 98. The Court further provided Mr. Walker would have 60 days, or until Monday July 5, 2021, to file a second amended petition for writ of habeas corpus. On July 6, 2021, counsel for Mr. Walker sought a ninety day (90) day extension to file Mr. Walker's second amended petition. ECF No. 99. The Court granted Mr. Walker's request on July 8, 2021. ECF No. 100.

<sup>1</sup> The Court denied the Respondents' motion for reconsideration of its order on November 18, 2016. ECF No. 74. The Court temporarily lifted the stay on May 16, 2017 to allow Mr. Walker to supplement his petition for writ of habeas corpus with a new claim. ECF No. 81. The Court noted the stay remained in effect in all other respects. ECF No. 81.

1       3.     A second extension of time to file Mr. Walker's second amended  
2 petition is merited on account of several filing deadlines and commitments  
3 undersigned counsel has had to meet since his first request for additional time.  
4 Specifically, undersigned counsel had to prepare and finalize claims for a 598-page  
5 amended habeas petition filed on August 30, 2021 in the capital habeas matter of  
6 *Biela v. State*, 2019 Nev. Unpub. LEXIS 475 (D. Nev. 2019). Further, counsel had to  
7 draft and file an appellate brief with the Ninth Circuit in the non-capital habeas  
8 matter of *Sempier v. Baker*, et al., 20-17249 (9th Cir.). Counsel also had to file a  
9 petition for habeas relief in the non-capital habeas matter of *Bautista v. Garrett*, et  
10 al., 20-cv-00403-LRH (D. Nev.). Finally, counsel had to prepare various pre-trial  
11 motions in the out-of-district federal capital trial case *United States v. Schlesinger*,  
12 18-cr-02719-RCC-BGM (D. Ariz.). Co-counsel for Mr. Walker, Kenneth Lee, has  
13 faced similar time constraints. Specifically, Mr. Lee has drafted a Ninth Circuit  
14 Reply Brief in *Sherman v. Gittere*, 16-9900 (9th Cir) and prepared a 149-page  
15 Opposition to Motion to Dimiss in *McConnell v. Gittere*, 3:10-cv-0021-GMN-WGC,  
16 which counsel had to get a short extension to finish. Further, Lee has been assisting  
17 in time-consuming lethal injection litigation matters in a capital habeas case where  
18 the State has actively sought to execute his client during the present year.

19       4.     An extension of time is also merited on account of counsel's recent  
20 inability to communicate or visit with Mr. Walker. For several months now, counsel  
21 has had difficulty scheduling visits with Mr. Walker due to unresponsiveness on the  
22 part of High Desert State Prison (HDSP) officials charged with processing such  
23 requests. Starting approximately one month ago, HDSP ceased responding to

1 counsel's requests. On September 25, 2021, after several weeks of unsuccessfully  
2 attempting to contact prison officials, counsel received confirmation he could visit  
3 Mr. Walker. Communicating and visiting with Mr. Walker is critical to addressing  
4 matters pertinent to his amended petition. Absent any unforeseen difficulties with  
5 HDSP, counsel intends to visit Mr. Walker in the coming weeks.

6 5. The present request for an extension is unopposed. On September 30,  
7 2021 counsel for Petitioner contacted Deputy Attorney Jessica Perlick via email  
8 concerning this request for an extension of time. Ms. Perlick has no objection to the  
9 request. Petitioner understands that opposing counsel's non-opposition does not  
10 waive any claims, defenses, statute of limitations, or other substantive arguments  
11 the Respondents may choose to raise at a later date. Petitioner further understands  
12 Respondents are not making any factual concession regarding the basis for the  
13 extension request, as provided above, by not objecting.

14 6. This requested extension will permit counsel time to meet with Mr.  
15 Walker and adequately prepare his amended petition. It is not made for purposes of  
16 delay, but rather in the interests of justice.

17 I declare under penalty of perjury that the foregoing is true and correct, and  
18 that this declaration was executed on October 4, 2021, in Las Vegas, Nevada.

19 IT IS SO ORDERED:



20 RICHARD F. BOULWARE, II  
21 United States District Judge

22 DATED this 5th day of October, 2021.

23 */s/ Martin L. Novillo*  
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MARTIN L. NOVILLO  
Assistant Federal Public Defender

## **CERTIFICATE OF SERVICE**

In accordance with LR IC 4-1 of the Local Rules of Practice, the undersigned hereby certifies that on the 4th of October, 2021, a true and correct copy of the foregoing Unopposed Motion for Extension of Time to File Second Amended Petition (Second Request) was served by the United States District Court, CM/ECF electronic filing system to:

Jessica Perlick  
Deputy Solicitor General  
jperlick@ag.nv.gov

/s/ *Sara Jelinek*  
An Employee of the  
Federal Public Defender